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Message Text

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43
ACTION OPIC-06

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E.O. 11652: NA
TAGS: EINV, MY
SUBJ: OPIC INSURANCE

REF: KL 5007

1. IN EFFORT TO ENSURE THAT LEGAL ARGUMENT SURROUNDING OPIC INSURANCE FOR THIRD COUNTRY SUBSIDIARIES OF U.S. CORPORATION RECEIVES APPROPRIATELY HIGH LEVEL CONSIDERATION, ON AUG 25 CHARGE AND COMATT CALLED ON DATUK ATHI NAHAPPAN, DEPUTY MINISTER OF LAWS. MAIN THRUST OF CHARGE'S PRESENTATION SAME AS THAT CONTAINED IN HUNT MEMORANDUM: THIS IS BASICALLY POLICY, NOT LEGAL, ISSUE BETWEEN TWO GOVERNMENTS; GOM DECISION NOT TO ALLOW SUCH COVERAGE COULD HAVE NEGATIVE IMPACT ON CERTAIN PENDING INVESTMENTS; EITHER IGA NOR MALAYSIAN LAW PRECLUDE SUCH COVERAGE AND; IGA GRANTS USG AND U.S. COMPANIES NO SPECIAL PRIVILEGES IN MALAYSIA.

2. NAHAPPAN HAD BEEN GENERALLY WELL BRIEFED FOR MEETING WHICH ALSO INCLUDED REP FROM FOREIGN MINISTRY AND TWO LEGAL OFFICERS IN ATTORNEY GENERAL'S OFFICE RESPONSIBLE FOR OPIC QUESTION. AFTER REVIEW OF MUCH FAMILIAR GROUND, DISCUSSION FOCUSED ON "IMPRECISION" OF IGA COMPARED TO MORE RECENT AGREEMENTS MALAYSIA HAS ENTERED INTO. QUESTION OF RENEGOTIATION OF IGA AGAINS RAISED BY MALAYSIANS. WE RESPONDED THAT WHILE
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USG WOULD, OF COURSE, CONSIDER ANY PROPOSALS GOM MIGHT WISH TO MAKE REGARDING IGA, TWO POINTS SHOULD

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BE KEPT IN MID:
A) USG SATISFIED WITH PRESENT WORDING OF IGA AND,
B) RENEGOTIATION TIME-CONSUMING PROCESS AT BEST AND
CERTAIN INVESTMENT DECISIONS (AUSTRALIAN CARBON BLACK)
COULD NOT WAIT FOR SUCH EVENT.

3. AT THIS POINT, SERIOUS GAP IN NAHAPPAN'S KNOWLEDGE
OF CASE BECAME EVIDENT. HE STATED THAT MOTOROLA
APPLICATION FIRST SUCH BY THIRD COUNTRY SUBSIDIARY OF
U.S. COMPANY UNDER IGA. WHEN WE CORRECTED HIM ON THIS
POINT, CONVERSATION TOOK RADICAL TURN. HE IMMEDIATELY
DEMANDED CONFIRMATION OF OUR POSITION FROM HIS STAFF
ADN, UPON RECEIVING IT, STATED THAT CLEAR PRECEDENT
ALREADY ESTABLISHED. HE THEN ASKED US TO PROVIDE
HIM WITH RELEVANT SECTIONS OF U.S. LAW MENTIONED IN
IGA. WE PROMISED TO PROVIDE THEM TO HIM. HE ALSO
STATED WILLINGNESS TO SEPARATE ISSUE OF APPROVAL FOR
INSURANCE UNDER EXISTING AGREEMENT FROM THAT OF RENE-
GOTIATING AGREEMENT. HE ENDED MEETING BY SAYING HE
WOULD MAKE DECISION ON THIS CASE "WITHIN THREE OR FOUR
DAYS."

4. COMMENT. WE BELIEVE THIS TO HAVE BEEN A MOST
FRUITFUL MEETING. QUESTION OF POLICY IMPLICATIONS
OF GOM DECISION NOW CLEARLY UNDERSTOOD AT APPROPRIATELY
HIGH LEVEL. AFTER HE FOUND HE HAD BEEN LEFT EXPOSED
BY HIS STAFF, NAHAPPAN GAVE CLEAR IMPRESSION THAT,
IN VIEW OF EXISTING PRECEDENT, APPROVAL OF INSURANCE
SHOULD CONTINUE TO BE GIVEN BY GOM. HE CLEARLY NO
LONGER INTERESTED IN STAFF'S CONTINUING AGONIZING
OVER ABSTRACT QUESTIONS OF INTERNATIONAL LAW. AS SOON
AS WE LEARN WHAT NAHAPPAN'S DECISION IS, IT WILL BE
REPORTED TO DEPT.
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